COMMISSION REGULATION (EC) No 2479/2001

of 17 December 2001

imposing a provisional anti-dumping duty on imports of recordable compact disks originating in Taiwan

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 2238/2000 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 31 March 2001, the Commission announced, by notice published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of recordable compact disks (hereinafter 'CD-Rs') originating in Taiwan and commenced an investigation.

(2) The proceeding was initiated as a result of a complaint lodged in February 2001 by the Committee of European CD-R Manufacturers ('CECMA') acting on behalf of producers representing a major proportion of the total Community production of CD-Rs. The complaint contained evidence of dumping of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

(3) The Commission officially advised the complainant Community producers, as well as the other known Community producers, exporting producers, importers, users and suppliers of raw materials known to be concerned and the representatives of Taiwan of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) A number of exporting producers in Taiwan and their association, as well as complainant and other Community producers and importers, made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted a hearing.

(5) Certain parties contended that the complaining Community producers did not fulfil the requirements of Article 5(4) of Regulation (EC) No 384/96 (hereinafter 'the basic Regulation'). In this respect, the statutory pre-initiation verification by the Commission showed that both the 25 % and 50 % thresholds of Article 5(4) were met. In fact, the complaining Community producers accounted for over 26 % of total Community production and no eligible Community producers expressed opposition to the initiation of the investigation. It should be noted that, on the basis of the available information regarding Community producers (including their relation to Taiwanese exporting producers and the proportion of their import activity of the product concerned originating in Taiwan), the Commission decided, in accordance with Article 4(1) of the basic Regulation, to exclude six producers in the framework of the definition of total Community production, none of which were complainants.

(6) In view of the large number of exporting producers in Taiwan, the Commission examined the possibility of applying sampling techniques in accordance with Article 17 of the basic Regulation. The Commission sent questionnaires to, and received detailed information from, a representative sample of exporting producers in Taiwan (see recital 17).

According to the same Article 17 of the basic Regulation and in view of the large number of importers, the possibility of applying sampling techniques was examined. However, only five importers came forward and submitted information as specified in the notice of initiation. The Commission sent them questionnaires, to which only three importers replied.

The Commission also sent questionnaires to all other parties known to be concerned and received replies from the four complaining Community producers, as well as from 10 other Community producers, which were considered to be meaningful and complete.

(7) The Commission sought and verified all the information it deemed necessary for the purpose of a preliminary determination of dumping, injury and Community interest, and carried out verification visits at the premises of the following companies:

(a) *Exporting producers in Taiwan*

— Auvistar Industry Co., Chung-Li
— Princo Corporation, Hsinchu
— Prodisc Technology Inc., Taipei
— Ritek Corporation, Hsinchu
— Unidisc Technology Co., Taipei

(b) *Related importers in the Community*

— Multimedia Info-Tech Ltd, Belfast, Northern Ireland

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 257, 11.10.2000, p. 2.
[3] OJ C 102, 31.3.2001, p. 2.

(c) *Producers in the Community*

— Computer Support Italcard SRL, Milan, Italy
— CPO Magnetic Products BV, Oosterhout, Netherlands
— Fuji Magnetics GmbH, Kleve, Germany
— Matsushita Media Manufacturing Ireland Ltd, Youghal, Ireland
— Mitsui Advanced Media SA, Ensisheim, France
— MPO Media SAS, Averton, France
— TDK Recording Media Europe SA, Bascharage, Luxembourg

(8) The investigation of dumping and injury covered the period from 1 January 2000 to 31 December 2000 (hereinafter referred to as 'the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 1997 to the end of the investigation period ('the period considered').

B. **PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT**

1. **Product under consideration**

(9) The product under consideration is recordable compact disks ('CD-Rs') currently classifiable under CN code ex 8523 90 00.

(10) A CD-R is a polycarbonate disk, which is coated with a layer of dye, a layer of reflective material such as gold or silver and a protective layer. Recording on such a disk can be done only once and therefore the disk is said to be of the type 'WORM' (Write Once Read Many). The disk is an optical storage medium for digital data or music. Recording is realised by exposing the dye layer to an infrared laser beam in a CD-R recorder.

CD-Rs can be distinguished according to the type of data stored (data CD-R versus music CD-R), the storage capacity, the reflective metal layer (mainly silver) and whether or not the CD-R is printed upon.

The product is also sold in different qualities and comes on the market in different types of packaging of which the most frequently encountered are regular or slim jewel cases containing one CD-R, shrink-wrapped spindles of 10 to 100 CD-Rs, cake boxes of 10 to 100 CD-Rs, envelopes containing one CD-R packed in cellophane, carton boxes, etc.

Although the use and the quality of the various types of CD-R sold may differ, this does not entail any significant differences in the basic physical and technical characteristics of the different types. They are therefore considered as one product for the purpose of this investigation.

2. **Like product**

(11) The Commission found that there were no differences in the basic physical and technical characteristics and uses of the CD-Rs imported into the Community originating in Taiwan and the CD-Rs produced by the complainant and other Community producers, sold on the Community market. It was also found that there was no difference between the CD-Rs produced in Taiwan and exported to the European Community and those sold on the domestic market of Taiwan. It was therefore concluded that both the CD-Rs produced and sold by the Community industry on the Community market and the CD-Rs produced and sold on the domestic market of Taiwan were, within the meaning of Article 1(4) of the basic Regulation, alike to the CD-Rs imported into the Community originating in Taiwan.

C. **SAMPLING**

(a) *Sampling of Taiwanese exporters*

(12) In view of the large number of exporting producers in Taiwan, the Commission decided that it might be necessary to apply sampling techniques in accordance with Article 17 of the basic Regulation.

(13) In order to enable the Commission to select a sample, pursuant to Article 17(2) of the basic Regulation, exporting producers were requested to make themselves known within three weeks of the initiation of the proceeding and provide basic information on their export and domestic sales, their precise activities with regard to the production of the product concerned and the names and activities of all their related companies in the production and/or selling of the product concerned. The Taiwanese authorities and the Taiwanese association of exporting producers were also consulted in this regard by the Commission and raised no objection against the use of sampling.

(b) *Pre-selection of cooperating companies*

(14) 14 companies in Taiwan came forward and provided the requested information within the three-week period set by Article 17(2) of the basic Regulation. However, only 12 companies reported exports to the Community during the investigation period. Those companies that exported the product concerned to the Community during the investigation period and expressed a wish to participate in the sample were initially considered as cooperating companies and were taken into account in the selection of the sample.

These companies represented up to 88 % of total exports of the product concerned from Taiwan to the Community.

(15) Companies, which did not make themselves known within the three-week period, were considered as non-cooperating companies.

(c) *Selection of the sample*

(16) According to Article 17(1) of the basic Regulation, the selection was based on the largest representative volume of exports, which could reasonably be investigated within the time available. On this basis, six Taiwanese companies (including four related exporting producers belonging to the same group) were selected for the sample in consultation with the Taiwanese association of exporting producers. The Taiwanese authorities were informed accordingly.

(17) The six cooperating companies that were not finally retained in the sample were informed that any anti-dumping duty on their exports would be calculated in accordance with the provisions of Article 9(6) of the basic Regulation. Some of these companies initially indicated their intention to claim an individual margin in accordance with Article 17(3) of the basic Regulation, in case they were not selected in the sample. However, no substantiated claim was received within the deadline specified in the notice of initiation.

(18) Questionnaires were sent for completion to all six initially sampled companies. However, one of the sampled companies finally decided not to submit a questionnaire response. Consequently, this company was informed that it was no longer considered to be cooperating in the investigation and it should therefore receive the same treatment as other non-cooperating companies. As a result, the level of non-cooperation increased to 22 % of total exports to the Community.

D. **DUMPING**

3. **Normal value**

(19) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of CD-Rs to independent customers by each exporting producer were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community.

This assessment revealed that all investigated exporting producers had representative sales of CD-Rs on their domestic markets during the investigation period.

(20) The Commission considered domestically sold and exported product types, which had similar storage capacity, metal layer, printing, quality and uses, as being directly comparable.

(21) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

(22) The Commission subsequently examined whether the domestic sales of each company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, sold at a loss on the domestic market during the investigation period:

(a) for those product types where more than 80 % by volume of sales on the domestic market were not below unit costs and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question;

(b) for those product types where at least 10 %, but no more than 80 %, by volume of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were found equal to or above unit costs only, of the type in question;

(c) for those product types where less than 10 %, by volume, was sold on the domestic market at a price not below unit costs, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value was constructed.

(23) For all types sold for export to the Community by one investigated company and for certain types sold for export to the Community by the other four investigated companies, domestic sales were found to have been made in the ordinary course of trade. Normal value was based for the corresponding product type on the actual prices paid or payable, by independent customers in the domestic market of Taiwan, during the investigation period, as set out in Article 2(1) of the basic Regulation.

(24) For product types not made in the ordinary course of trade, as well as for the product types that were not sold in representative quantities on the domestic market, normal value had to be constructed. Four investigated companies sold such product types for export to the Community.

(25) To construct normal value pursuant to Article 2(6) of the basic Regulation, the selling, general and administrative ('SG & A') expenses incurred and weighted average profit realised by the cooperating exporting producers concerned on domestic sales of the like product, in the ordinary course of trade, during the investigation period, was added to their own average cost of manufacturing during the investigation period. Where necessary, the manufacturing costs and SG & A expenses reported were corrected, before being used in the ordinary course of trade test and in constructing normal values.

4. **Export price**

(26) For all exports of the product concerned that were made directly to independent customers in the Community by all five investigated exporting producers, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.

Two investigated exporting producers also sold the product concerned to related parties in the Community. For these exports, the export price was established in accordance with Article 2(9) of the basic Regulation, on the basis of prices at which the imported products were first resold to an independent buyer. For this purpose, adjustments were made to take account of all costs, including duties and taxes, incurred between importation and resale, and of profits normally accruing, so that a reliable export price could be established.

5. **Comparison**

(27) The comparison between normal value and export price was made on an ex-factory basis.

For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. For all investigated exporting producers allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, warranty and guarantee costs, and commissions have been granted where applicable and justified.

Two exporting producers claimed a special adjustment for differences in average purchase quantities. These companies claimed that they charged lower prices for bigger purchase quantities and that the average purchase quantity for sales to the Community was considerably higher than the average purchase quantity in the domestic market. However, the companies concerned could not demonstrate, as required in Article 2(10)(k) of the basic Regulation that customers in the domestic market consistently paid different prices because of the difference in purchase quantities. Therefore, the claim was rejected.

6. **Dumping margins**

(a) *Dumping margin for companies investigated*

(28) Dumping margins were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type. However, dumping margins were established on the basis of a comparison by product type of the weighted average normal value with the prices of all individual export transactions when a pattern of export prices which differ significantly between time periods was established and the full degree of dumping being practised was not reflected in the comparison of a weighted average normal value by product type with a weighted average export price by product type.

(29) For the five companies investigated a pattern of export prices, which differed significantly among different time periods within the investigation period, could be established. For three companies a considerable difference was found between the dumping margin established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type, and the dumping margin established on the basis of a comparison of a weighted average normal value by product type with prices of all individual export transactions by product type. According to Article 2(11) of the basic Regulation and in order to reflect the full degree of dumping being practised by these three companies, the dumping margin finally established for them was based on a comparison of the weighted average normal value by product type with prices of all individual export transactions. For the other two companies the dumping margin was established by comparing the weighted average normal value by product type with the weighted average export price by product type.

(30) It has been the consistent practice of the Commission to consider related companies or companies belonging to the same group as one single entity for the determination of a dumping margin and thus to establish one single dumping margin. This is because calculating individual dumping margins might encourage circumvention of anti-dumping measures, thus rendering them ineffective, by enabling related producers to channel their exports to the Community through the company with the lowest individual dumping margin. In accordance with this practice, the four related exporting producers belonging to the same group were regarded as one single entity and attributed one single dumping margin. For these exporting producers it was decided to first calculate a dumping margin per company and then to establish a weighted average of these dumping margins which was attributed to the group as a whole.

(b) *Dumping margin for cooperating companies not in the sample*

(31) The dumping margin for exporting producers, which made themselves known in accordance with Article 17 of the basic Regulation but were not examined individually, has been established on the basis of the weighted average of the dumping margins of the companies in the sample pursuant to Article 9(6) of the basic Regulation.

(c) *Dumping margin for non-cooperating companies*

(32) For those exporting producers which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation.

(33) The volume of exports to the Community reported by the cooperating exporting producers was compared with the equivalent Eurostat import statistics in order to establish the overall level of cooperation.

It was found that the overall non-cooperation in Taiwan was high. If the overall level of non-cooperation is high, it is considered appropriate to set a residual dumping margin for the non-cooperating companies at a level higher than the highest dumping margin established for a cooperating company. Indeed, there is reason to believe that the high level of non-cooperation results from the non-cooperating producers in Taiwan generally having dumped at a higher level than any cooperating producer. The residual dumping margin for Taiwan was therefore established at a level higher than the highest dumping margin established for a cooperating company. This level corresponds to the weighted average dumping margin of the product types with the highest dumping margin sold in representative quantities.

The above approach with regard to non-cooperating companies was also considered necessary in order to prevent non-cooperating companies benefiting from their non-cooperation.

(34) The provisional dumping margins, expressed as a percentage of the cif import price at the Community border duty unpaid, are the following:

Auvistar Industry Co.:	18,8 %
Princo Corporation:	29,9 %
Prodisc Technology Inc.:	18,8 %
Ritek Corporation:	18,8 %
Unidisc Technology Co.:	18,8 %
Cooperating exporting producers not in the sample:	20,1 %
Non-cooperating exporting producers:	39,5 %

E. DEFINITION OF THE COMMUNITY INDUSTRY

1. Community production

(35) During the IP, CD-Rs were manufactured in the Community by the following companies:

— four complainant producers who cooperated in the proceeding,

— five non-complainant producers who cooperated in the proceeding and supported the proceeding,

— two non-complainant producers, of which one supported the proceeding and one declared itself neutral, both of which only submitted a confidential questionnaire reply,

— three non-complainant producers who supported the proceeding and submitted questionnaire replies but did not subsequently reply to the deficiency requests,

— four non-complainant producers who provided some general information to the Commission but did not cooperate in the investigation and of which two opposed the proceeding and two declared themselves neutral,

— eight other non-complainant producers who did not co-operate in the proceeding and of which one supported the proceeding.

(36) The fact that several non-complaining Community producers have cooperated in the framework of the investigation provided the Commission with the opportunity to examine their status in relation to Article 4(1) of the basic Regulation in more depth. Some of the cooperating producers (including some who originally were not complainants) were found to have imported CD-Rs from Taiwan. However, there were no reasons to exclude those companies from the definition of Community production, given the fact that a substantial part of those purchases was made in order to satisfy market demand while installing new or additional capacity, and based on the relatively low percentage of purchases from Taiwan compared to total sales and own production in the IP.

(37) Therefore, the CD-Rs produced by all these companies constitutes the Community production within the meaning of Article 4(1) of the basic Regulation.

2. Definition of the Community industry

(38) The nine cooperating Community producers who supported the complaint represented a major proportion of the total Community production of CD-Rs during the IP, in this case 69,4 %. On this basis, they were deemed to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation. They are referred to as the 'Community industry' hereafter.

F. INJURY

1. Preliminary remark

(39) CD-Rs are relatively recent high-tech products. They became available to the general public and their breakthrough mainly occurred during 1997-98. Since then, the growth of demand for this new storage medium has been spectacular. This explains why a number of indicators, such as consumption, production and sales all show a high growth.

2. Community consumption

(40) Community consumption was based on the volume of sales of own-produced CD-Rs by the Community industry, the sales volume of the five companies that submitted questionnaire replies but were excluded from the definition of the Community industry, the sales volume of the four companies that provided general information, on Eurostat-information concerning the import volumes originating in Taiwan and in other third countries and on an estimate of the sales of the remaining Community producers based on information collected by the Commission during its investigation relating to the acceptance of the complaint.

Consumption (1 000 units)	1997	1998	1999	2000 (= IP)
CD-Rs	159 876	459 166	1 172 950	2 017 557
Index	100	287	734	1 262

3. **Imports of CD-Rs into the Community**

(a) *Volume, price and market share of imports originating in Taiwan*

(41) The volume of imports from Taiwan increased significantly over the period considered.

Imports (1 000 units)	1997	1998	1999	2000 (= IP)
Taiwan	10 152	111 447	612 539	1 212 237
Index	100	1 098	6 034	11 941

(42) The average import price of CD-Rs from Taiwan significantly decreased by 73 % over the period considered. After a 51 % decrease from 1997 to 1998, the price of Taiwanese imports decreased further by 21 % from 1998 to 1999 and by 30 % from 1999 to 2000.

Average import price per unit (ECU/EUR)	1997	1998	1999	2000 (= IP)
Taiwan	1,1	0,6	0,4	0,3
Index	100	49	38	27

(43) Taiwan increased its market share considerably over the period considered.

Market shares	1997	1998	1999	2000 (= IP)
Taiwan	6,3 %	24,3 %	52,2 %	60,1 %
Index	100	382	822	946

(b) *Price undercutting*

(44) For the determination of price undercutting the Commission analysed price data referring to the IP. The relevant sales prices of the Community industry are net prices after deduction of discounts and rebates. Where necessary these prices were adjusted to an ex-works level, i.e. excluding freight costs in the Community. Taiwanese import prices compared are also net of discounts and rebates and are adjusted where necessary to CIF Community frontier.

(45) Based on the questionnaire replies, different product families of CD-Rs could be defined for comparison purposes based on the following criteria: storage capacity, type of data recorded, nature of the reflective layer, printing and packaging. The physical CD-R characteristics were found to be of a less decisive influence on the sales price of CD-Rs, whereas the packaging proved to be a particularly influential criterion for comparison purposes.

(46) The Community industry's sales prices and the import prices of the Taiwanese exporting producers were compared at the same level of trade, namely independent customers within the Community market, duly adjusted where appropriate.

(47) During the IP, weighted average price undercutting margins, expressed as a percentage of the Community industry's sales prices, ranged from 25,5 % to 29,5 %. The weighted average price-undercutting margin was 29 %.

4. **Situation of the Community industry**

(a) *Preliminary remark*

(48) The first wave of installation of new European facilities can be situated around 1997, which therefore is a start-up year with high per unit cost of production and low capacity utilisation. After having obtained a reasonable scale of production and having reduced the cost of production considerably, the outlook for this industry was favourable in 1999. This attracted further investments and new starters.

(b) *Production, capacity and capacity utilisation*

	1997	1998	1999	2000 (= IP)
Production (1 000 units)	19 371	85 692	210 442	322 679
Index	100	442	1 086	1 666
Capacity (1 000 units)	55 589	126 588	229 344	373 879
Index	100	228	413	673
Capacity utilisation	34,8 %	67,7 %	91,8 %	86,3 %

(49) As a consequence of the spectacular expansion of Community consumption, the Community industry's production of CD-Rs increased continuously over the period considered.

(50) Capacity utilisation followed an increasing trend up to 1999 but fell in the IP because the actual sales volume was below projections. This evolution led to a massive increase in stocks. In order to prevent excessive stockbuilding, some producers even resorted to occasional stoppages in production.

(51) The production capacity of the Community industry showed a seven-fold increase over the period considered. This is due to the important investments in machinery and equipment, which were made particularly during 1997 and 1999. In general 1997 can be considered as a start-up year, which is illustrated by the low capacity utilisation rate achieved that year. A time-span of typically six months elapsed between the purchase of the major parts of the installation and the actual start of production. The year 1998 was mainly characterised by making capacity ready for use and by fine-tuning the production process. Capacity utilisation could thus be increased to 68 %. The capacity utilisation further increased during 1999 due to the mentioned mastering of the production process in combination with favourable market conditions. The downturn occurred in the IP when sales projections were not met.

(c) *Sales volume, sales price, market share and growth*

Sales in the Community	1997	1998	1999	2000 (= IP)
Volume (1 000 units)	17 838	73 229	176 904	223 116
Index	100	411	992	1 251
Sales price (ECU/EUR per CD)	1,7	0,9	0,9	0,6
Index	100	55	53	35

(52) Based on the favourable evolution of Community consumption, the volume of sales of the Community industry in the Community significantly expanded over the period considered. From 1998 to 2000, the Community industry's sales in volume tripled but the Community market more than quadrupled over the same period. Average sales prices of the Community industry decreased by 65 % during the period considered.

(53) The Community industry gained market share between 1997 and 1998; it was around 16 % in 1998 and 1999. Since 1999, larger volumes of Taiwanese imports entered the Community market. The Community industry's market share dropped to 12,6 % in the IP. Overall, the market share of the Community industry has increased from 11,6 % to 12,6 % over the period considered, while the share of imports concerned went up from 6,3 % to 60,1 %.

Community industry	1997	1998	1999	2000 (= IP)
Market share	11,6 %	16,8 %	16,2 %	12,6 %
Index	100	144	139	108

(54) Both the sales of the Community industry and the Community consumption increased by a factor of 13 over the period considered. Imports originating in Taiwan grew by a factor of 119 over the same period. From 1999 to the IP, sales of the Community industry increased by 26 % whereas Community consumption expanded by 72 % and Taiwanese imports by 98 %.

(d) *Stocks*

(55) Stocks of own produced CD-Rs increased significantly towards the end of 1999 and to an even higher degree towards the end of 2000. The sales volume increased less than foreseen which led to stock building on the one hand and to reductions and even occasional stoppages of production on the other. Stocks, expressed as a percentage of production of CD-Rs, attained a considerable 20,3 % in the IP, notwithstanding these stoppages.

Stocks	1997	1998	1999	2000 (= IP)
(1 000 units)	6 734	8 513	25 479	65 561
Index	100	126	378	974

(e) *Cost of production and profitability*

(56) Notwithstanding the decrease in sales prices, the Community industry became profitable in 1999. The Community industry managed to significantly reduce its manufacturing cost, which represented during the IP around 80 % of the full cost of production of CD-Rs, over the period 1997-99 because of economies of scale of production and the fine-tuning of the production process. Although this effort was continued in the IP and although important further cost reductions were achieved, the Community industry suffered considerable financial losses. Indeed, between 1999 and the IP, the decrease of the full cost of production by 22 % was not sufficient to compensate for the decrease of the sales prices by 34 %. This situation led to Community industry losses on turnover of – 4,8 % on average in the IP.

	1997	1998	1999	2000 (= IP)
Cost of production (ECU/EUR per CD)	3,3	1,2	0,8	0,6
Index	100	36	25	19
Profitability	– 89,1 %	– 25,0 %	10,7 %	– 4,8 %

(f) *Investments, return on investment, cash flow and the ability to raise capital*

	1997	1998	1999	2000 (= IP)
Investments (1 000 ECU/EUR)	69 043	29 370	59 531	23 635
Index	100	43	86	34
Return on investment	– 27,2 %	– 14,9 %	7,9 %	– 6,0 %
Cash flow (1 000 ECU/EUR)	– 16 374	– 8 424	34 738	12 371

(57) Investments were important during 1997, which can be considered a start-up year and during 1999 when a second wave of investments took place, inspired by the favourable market conditions existing at the time when investment appraisals were made.

(58) Due to the dramatic change of market conditions and more specifically the decline of market sales prices, new investment decisions during the IP were to a large extent postponed or cancelled, in spite of the further expansion of Community consumption.

(59) Return on investment based on the net result increased from – 27,2 % in 1997 to 7,9 % in 1999 and became negative again in 2000 (– 6 %).

(60) The Community industry's cash flow became positive for the first time in 1999. The cash flow during the IP however was again not sufficient to support depreciations, value adjustments and provisions. The continuation of investments therefore could not be guaranteed without attracting additional funding.

(61) The ability to raise capital is affected by the negative results for 2000 and the negative outlook concerning the market price evolution. Even for companies with the backing of a large group, it was impossible to attract new funding, because of insufficient projected return on investment.

(g) *Employment, productivity and wages*

	1997	1998	1999	2000 (= IP)
Employment	483	623	877	1 037
Index	100	129	181	215
Average employment cost per employee (1 000 ECU/EUR)	22,1	27,7	31,5	30,7
Index	100	125	143	139
Productivity CD per employee	40 100	137 500	240 000	311 200
Index	100	343	599	776

(62) Employment for the product under consideration more than doubled over the period considered. The increase went along with the installation of new capacity. The productivity per employee also increased continuously over the period considered.

(63) Part of the increase of employment can be attributed to the effort of the Community industry to achieve higher sales by introducing attractive packaging. Packaging turned out to be a more labour intensive and less automated activity than production and printing.

(64) The 39 % increase of the average wage cost per employee needs further clarification.

(h) *Magnitude of dumping*

(65) Given the volume and the price of the dumped imports, the impact of the actual margins of dumping, which are significant, cannot be considered to be negligible.

5. **Conclusion on injury**

(66) During the period considered the volume of low-priced imports from Taiwan increased significantly. Their market share increased from 6,3 % to 60,1 % and their import prices were reduced by 73 %. The Community market is dominated by Taiwanese imports, which over the period considered benefited considerably more from the favourable evolution of Community demand for CD-Rs than the Community industry in terms of volume of sales and market share.

(67) The increase of import volumes and the decline of the sales price were particularly pronounced between 1999 and the IP. Import volumes during that period doubled and import prices decreased by 30 %, undercutting the Community industry's sales prices by 29 % on average during the IP. As a consequence Taiwanese importers continued to gain market share.

(68) Some economic indicators pertaining to the situation of the Community industry, such as production of CD-Rs, production capacity installed, sales volume, employment and productivity, showed positive developments over the period considered. The rate of capacity utilisation increased until 1999, but decreased during the IP to 86 %. The average sales prices of the Community industry dropped considerably over the period considered.

(69) The Community industry originally built up a certain market share, which remained rather modest, but subsequently lost part of that market share to the Taiwanese importers since 1998. Difficulties encountered by the Community industry to obtain projected sales in an expanding market led to considerable stock building during the IP. During the IP, new investment decisions were to a large extent postponed or cancelled.

(70) The reduction of cost of production allowed the Community industry to achieve profitability in 1999, but further cost reductions were not sufficient to compensate for the significant decrease of the sales prices. Financial losses were incurred during the IP.

(71) Taking into account all factors mentioned above, in particular the fact that the Community industry was prevented from participating in the market growth, that the investment programmes for CD-Rs were significantly reduced due to the declining trend of sales prices, that the Community industry's sales prices were undercut by Taiwanese imports, the financial losses during the IP and the difficulties encountered in raising additional funding, it is considered that the Community industry has suffered material injury.

G. **CAUSATION OF INJURY**

1. **Introduction**

(72) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined whether the dumped imports of CD-Rs originating in Taiwan have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. **Effect of the dumped imports**

(73) Community consumption of CD-Rs increased dramatically over the period considered from 160 million CD-Rs to 2 018 million CD-Rs. Production by the Community industry increased at a similar pace, whereas dumped imports originating in Taiwan increased significantly more over the same period, reaching 1 212 million units in the IP, which corresponds to an increase of market share from 6,3 % to 60,1 % over the period considered. Over the same period considered, the Community industry increased its market share from 11,6 % to 12,6 %, corresponding with sales of 254 million units in the IP.

(74) The 73 % decrease of Taiwanese import prices over the period considered was considerable and Taiwanese prices have been constantly below the Community industry's sales prices (which decreased by 65 % during the period considered), the full cost of production of the Community industry and even below its manufacturing cost of CD-Rs. The weighted average price-undercutting margin found was 29 % during the IP.

(75) The price reductions over the period considered can partly be attributed to mastering of the production process and economies of scale of production of this recent high-tech product. However, these factors do not explain the extraordinary decrease of Taiwanese import prices.

(76) The Commission therefore concludes that a significant downward price pressure was exerted by the imports from Taiwan into the Community market and that these low-priced dumped imports had a significant negative impact on the situation of the Community industry.

3. **Impact of other factors**

(a) *Development of consumption*

(77) Over the period considered Community consumption increased by a factor of 13 an evolution that under normal circumstances would have allowed the Community industry to grow proportionately and to achieve a profitable scale of operations. The development of consumption thus has not contributed to the injury suffered by the Community industry.

(b) *Imports of CD-Rs from other third countries*

(78) In 1999 Taiwanese imports became more important than all other imports and during the IP represented 74 % of all imports into the Community.

Imports (1 000 units)	1997	1998	1999	2000 (= IP)
Other countries	126 019	228 518	297 733	429 347
Index	100	181	236	341
of which:				
Japan	52 811	80 089	128 640	192 183
Index	100	152	244	364
Singapore	22 782	53 267	71 220	55 420
Index	100	234	313	243

(79) The prices of all imports into the Community decreased significantly during the period considered.

Average import price per unit (ECU/EUR)	1997	1998	1999	2000 (= IP)
Other countries	1,33	0,65	0,63	0,37
Index	100	49	47	28
of which:				
Japan	1,94	1,20	0,89	0,42
Index	100	62	46	22
Singapore	0,81	0,39	0,35	0,28
Index	100	48	43	35

(80) The market share of imports from other countries declined by 73 % or by 57,5 percentage points. The increase of Taiwanese imports more than absorbed the decline of other imports from 1998 on. Apart from Japan and Singapore, which after Taiwan were the next largest exporters to the Community of the product concerned, more than 30 other countries together make up the remaining 9 % of market share during the IP.

Market shares	1997	1998	1999	2000 (= IP)
Other countries	78,8 %	49,8 %	25,4 %	21,3 %
Index	100	63	32	27
of which:				
Japan	33,0 %	17,4 %	11,0 %	9,5 %
Index	100	53	33	29
Singapore	14,2 %	11,6 %	6,1 %	2,7 %
Index	100	81	43	19

(81) Although during the IP imports from Japan represented only 16 % of Taiwanese imports, they traditionally have been important given the fact that two Japanese companies (Sony and Tai Yuden) invented the production process of CD-Rs (together with Philips) and that some of the largest Community producers have a full or partial Japanese shareholdership. Supplies from Japan supplemented the range of products intended to satisfy market demand, while production capacity was built. As a consequence, the market share of these imports decreased from 33 % to 9,5 % over the period considered, the latter share representing mainly direct sales into the Community market. Over the period considered, average Japanese import prices have been consistently higher than those of other imports.

(82) It was claimed that imports from Singapore, entering the Community market at low prices, were in fact responsible for the injury suffered by the Community industry. On the basis of Eurostat data, it can indeed be derived that imports from Singapore enter the Community on average at prices lower than those of the Taiwanese exporting producers. However, imports from Singapore decreased by 22,2 % from 1999 to the IP and in the IP represented 3,4 % of total imports and a share of 2,7 % of the Community market, descending from 14,2 % at the beginning of the period considered. On the basis of this evolution and the speed of market penetration by the Taiwanese imports over the period considered, the Commission found that any influence of imports originating in Singapore must be limited and that the possibility that those imports have led Taiwanese price-setting seems to be minor.

(83) It was also claimed that the People's Republic of China and Indonesia were responsible for the injury suffered by the Community industry. China represents 0,8 % of total imports of CD-Rs into the Community, which corresponds to a 0,67 % market share. Indonesia came into the market during 2000 and obtained a 0,18 % market share at prices, which, according to Eurostat data, were considerably lower than those of the Taiwanese imports. With regard to both China and Indonesia, their market share during the IP would be below the *de minimis* margin of 1 % of the Community market in accordance with the provisions of Article 5(7) of the basic Regulation.

(84) It is concluded that any effects of imports from third countries other than Taiwan cannot have been as such that they would break the causal link between dumping of Taiwanese imports and the injury suffered by the Community industry.

(c) *Export activity of the Community industry*

	1997	1998	1999	2000 (= IP)
Exports (1 000 units)	1 531	7 937	19 578	32 245
Index	100	518	1 279	2 106
Export price (ECU/EUR per unit)	1,73	0,92	0,86	0,59
Index	100	53	50	34

(85) The export activity of the Community industry in the IP represented 11,3 % of its total sales of own produced CD-Rs, compared to 7,6 % in 1997 and 9,3 % in both 1998 and 1999. Given the fact that exports of CD-Rs to third countries therefore are a relatively minor activity, any injury in terms of the evolution of production or sales caused by the evolution of exports over the period considered is considered to be limited. Export prices obtained are comparable to the sales prices to unrelated customers on the Community market.

(d) *Purchases from Taiwan and other third countries*

(86) The investigation showed that the Community industry during the period considered has purchased CD-Rs from other sources in order to respond to market demand. Total purchases represented 35,7 % of total sales in 1997, 44,8 % in 1998, 32,8 % in 1999 and 22,1 % in 2000. Imports from Taiwan represented respectively 0,6 % in 1997, 5,8 % in 1998, 17,9 % in 1999 and 7,7 % in 2000.

(87) The decrease of purchases from 1999 to the IP is a logical consequence of the additional capacity installed, the stockbuilding of own-produced CD-Rs and the downward adjustment of sales predictions by the Community industry.

(88) It was also found that the volume of purchased CD-Rs decreased compared to the Community industry's own production. Purchased volumes of CD-Rs represented 55,5 % in 1997, 78,7 % in 1998, 43,4 % in 1999 and 24 % in 2000. Taiwanese CD-Rs accounted for respectively 1 % in 1997, 10,1 % in 1998, 23,7 % in 1999 and 8,4 % in 2000.

(89) The purchases made by the Community industry were to a large extent of a temporary nature. In reaction to the increasing market opportunities and demand, a number of recording media producers (such as manufacturers of diskettes) have invested in the new technology of recordable CDs. Prior to the production facilities being operational, marketing efforts were already put into place and demand had to be partly fulfilled with purchased products. Japanese imports have been relatively important because Japan was the first country to install the technology and because, as already mentioned, an important part of the European industry belongs to Japanese groups.

(90) Purchases by the Community industry from the country concerned during the IP represented 2,2 % of total imports from Taiwan and total purchases represented 4,7 % of all imports into the Community and occurred mainly at the beginning of the IP. These purchases therefore cannot have had a decisive influence on the injurious situation suffered by the Community industry.

(e) *High-speed technology*

(91) It was claimed that the market share of European producers was negatively affected because of a slow adaptation to higher speed technology, meaning the technology that determines speed at which users can burn the CD-Rs.

(92) The investigation did not reveal that speed is a determining factor for price setting. Higher speed in burning CD-Rs must be supported by the hardware installed, meaning that this feature aims at existing users who are prepared to install new hardware or new users, who buy a CD-writer for the first time. Although figures estimating the share of those users compared to all users of CD-Rs are not available, it is clear that higher speed is not a consideration for all users.

(93) It was claimed that one non-cooperating Taiwanese exporting producer introduced 16x speed in October 2000, whereas the European producers lagged by introducing it in February 2001. The claim does not make clear whether introduction means start of production or start of sales. On the one hand, given that the Taiwanese exporting producer did not cooperate, the claim could not be checked at its level, but on the other hand an inquiry into the three largest producers belonging to the Community industry showed that one introduced 16x speed for sale on 1 November 2000, one on 15 December 2000 and one went directly on from 12x to 24x speed in 2001.

(94) The alleged impact of the adaptation of high-speed technology on the injurious situation of the Community industry therefore does not seem to exist.

4. **Conclusion on causation**

(95) Other factors than the dumped imports from the Taiwan, such as the development of Community consumption, the imports from other third countries, the export activity of the Community industry, the purchases of CD-Rs from third countries by the Community industry and the adaptation of high speed technology, were not found to have materially contributed to the injurious situation of the Community industry.

(96) The investigation has shown that during the period considered, the volume of low-priced dumped imports from Taiwan considerably increased and that the decrease of its import prices was pronounced, to an extent that could not be justified by the reduction in the cost of production based on the mastering of the production process and on economies of scale. During the IP, Taiwanese imports showed a relative importance of 74 % of all imports into the Community, a market share of 60 % of Community consumption and a price level which seems not to have been led by other imports and is amongst the lowest of all imports, significantly undercutting the Community industry's sales prices. Given the strong position of the Taiwanese exporting producers on the Community market, these developments had material negative consequences for the Community industry. Accordingly, it is provisionally concluded that these imports, taken in isolation, have caused material injury to the Community industry.

H. **COMMUNITY INTEREST**

1. **Introduction**

(97) The Commission examined whether, despite the conclusions on dumping, injury and causation, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 21(1) of the basic Regulation, the Commission considered the likely impact of measures for all parties concerned in the investigation.

2. **Interest of the Community industry**

(98) The situation of the Community industry has deteriorated due to low-priced imports of CD-Rs, causing a situation in which sales are made at a loss and in which it did not participate in the market growth as could have been expected on the basis of demand of CD-Rs in the Community market. The lower than expected sales led to high stockbuilding. Investments in additional production capacity are to a large extent, and at least temporarily, halted and some existing capacity has been idled. During the year 2000, five European producers completely abandoned CD-R production. However, the investment programs of the Community industry and the strategic technological importance of the sector of media recording show that the Community industry intends to remain active in the sector of CD-R production. Their continued presence in the market of recording media is moreover considered to be necessary in order to be able to follow the evolution of recordable DVD. Recording media producers as such still demonstrate competitiveness and are viable, especially the ones that have backing of larger, mainly Japanese, groups.

(99) The Commission services consider that, in the absence of the imposition of antidumping measures, the situation of the Community industry will deteriorate, further reducing the number of Community producers of CD-Rs and thus reducing employment. Stoppage of CD-R production would have technological implications in the sense that those producers would no longer be present on the market of recording media, thereby foregoing a strategic role in future technological developments such as DVD standards and subsequent recording media products.

(100) Since the objective of the adoption of anti-dumping measures is to re-establish fair competition in the Community market, this would be in the interest of the Community industry, since it has, in spite of the injury suffered, proved to be viable in principle.

3. **Interest of importers**

(101) The Commission services received three questionnaire replies from importers, representing 5,3 % of total imports from Taiwan during the IP. The companies involved were:

— Imation Europe BV, Schiphol, Netherlands,

— Dysan Products Europe Ltd, Camberley, United Kingdom,

— Memorex Products Europe Ltd, Hammondsworth, United Kingdom.

These interested parties stated that they were against the imposition of anti-dumping duties. During the IP, their purchases of CD-Rs originated almost exclusively in Taiwan.

(102) The three cooperating importers taken together suffered losses in 2000, after having realised profitable operations in 1999. It was concluded that even for those importers, prices during the IP have decreased to such an extent that a normal trading contribution margin was no longer sufficient to cover overhead costs. This seems to indicate that an upward adjusted price level would be in the interest of importers.

4. **Interest of users and consumers**

(103) The Commission did not receive any reactions from users, i.e. companies that use CD-Rs for small runs of duplications of music CDs or software.

(104) As to consumers, the European Consumer organisation (BEUC) was contacted but did not cooperate in the proceeding.

(105) This seems to indicate that neither users nor consumers would be unduly affected by the imposition of measures.

5. **Other arguments**

(106) A major claim against the imposition of measures is that the capacity of European producers is not sufficient to fulfil Community demand. Indeed, the investigation has shown that the capacity installed in Europe cannot fulfil the existing demand on the Community market, even when taking into account the existing spare capacity and the postponed investment plans. However, this can not justify the injurious behaviour of Taiwanese exporting producers. Furthermore, the imposition of anti-dumping duties is not intended to close this market to Taiwanese exporting producers but to restore fair trade conditions and effective competition on the Community market. In that sense, Taiwanese imports would continue to be present on the Community market, but at prices which are no longer injuriously dumped. Moreover, imports from third countries not subject to measures are likely to gain importance once injurious dumping from Taiwan no longer takes place. On this basis, the Commission concludes that a risk of supply shortage does not exist.

6. **Conclusion on Community interest**

(107) On the basis of the above, it is concluded that there are no compelling reasons on the grounds of Community interest not to impose anti-dumping measures.

I. **PROVISIONAL ANTI-DUMPING MEASURES**

1. **Injury elimination level**

(108) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports.

(109) For the purpose of establishing the level of the provisional measures, account has been taken of both the dumping margins found and the amount of injury sustained by the Community industry.

(110) The provisional measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margins found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain overall a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 8 % of turnover.

(111) The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the non-injurious price of the different models sold by the Community industry on the Community market. The non-injurious price per model has been obtained by adding the abovementioned profit margin of 8 % to the cost of production per model. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value. These differences were in all cases above the dumping margins found.

2. **Provisional measures**

(112) In the light of the foregoing and in accordance with Article 7(2) of the basic Regulation, it is considered that provisional anti-dumping duties should be imposed at the level of the dumping margins found, since as mentioned above the injury elimination margins found were in all cases above the dumping margins.

(113) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(114) Any claim requesting the application of these individual company anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

J. **FINAL PROVISION**

(115) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of recordable compact disks (CD-Rs), currently classifiable within CN code ex 8523 90 00 (TARIC code 8523 90 00 10), originating in Taiwan.

2. The rate of the provisional duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the following companies shall be as follows:

[1] European Commission
Directorate-General Trade
Directorate C
TERM 0/13
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

Country	Company	Rate of duty (%)	TARIC additional code
Taiwan	Acer Media Technology Inc., 29 Jianguo E. Road, Gueishan, Taoyuan 333, Taiwan, ROC	20,1	A298
	Auvistar Industry Co., Ltd 21, Tung-Yuan Road, Chung-Li Industrial Park, Taiwan ROC	18,8	A299
	Digital Storage Technology Co., Ltd, No 42, Kung 4 Rd, Linkou 2nd Industrial Park, Taipei Hsien, Taiwan ROC	20,1	A300
	Gigastorage Corporation, 2, Kuang Fu South Rd, Hsinchu Industrial Park, Hsinchu, Taiwan ROC	20,1	A301
	Lead Data Inc., No 23, Kon Yeh 5th Rd Hsinchu Industrial Park Fu Kou Hsiangh, Hsinchu Hsien, Taiwan, ROC	20,1	A302
	Megamedia Corporation, No 13, Kung Chien Rd, Chi-Tu District, Keelung, Taiwan, ROC	20,1	A303
	Postech Corporation No 42, Kuang Fu South Road, Hsinchu Industrial Park, Hsinchu Hsien, Taiwan, ROC	20,1	A304
	Princo Corporation, No 6, Creation 4th Rd, Science-based Industrial Park, Hsinchu Taiwan ROC	29,9	A305
	Prodisc Technology Inc., No 13, Wu Chuan 7th Rd, Wu-Ku Industrial District, Wu-Ku County, Taipei, Taiwan ROC	18,8	A306
	Ritek Corporation, No 42, Kuanfu N. Road, Hsinchu Industrial Park, Taiwan 30316 ROC	18,8	A307
	Unidisc Technology Co., Ltd 4F, No 543, Chung-Cheng Rd, Hsin-Tien, Taipei, ROC	18,8	A308
	All other companies	39,5	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

Article 1 of this Regulation shall apply for a period of six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 December 2001.

For the Commission

Pascal LAMY

Member of the Commission